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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.138 OF 2007
IN
SUIT NO.104 OF 1990

Vinod Developers ... Plaintiffs
versus
Bharatsingh Kubersingh Thakur
and others ... Defendants
and
Praavin Bharat Singh and ors. ... Respondents

Mr.Milind Vasudeo a/w Kalpesh Joshi i/by M/s.Malvi Ranchodddas for plaintiffs.

Mrs.U.K.Shah for respondent no.2.

Mr.P.G.Lad for defendant no.4.

CORAM : A.M.KHANWILKAR, J.

DATE : 08th August 2007

PC :

1. This Chamber Summons is opposed only by respondent no.4. The first objection of respondent no.4 is in relation to accepting the request of the plaintiff in terms of clause-1 of the Schedule to the Chamber Summons. It is submitted that the suit has been originally instituted by a registered partnership firm. Assuming that the partnership firm is now

dissolved and in stead the same has become proprietorship firm of Vinod Tanna, the question whether the said proprietorship firm has succeeded to the right of the partnership firm to prosecute the present proceedings, is a matter which will have to be examined in the first instance. In my opinion, that aspect can be considered at the hearing of the suit. It is not possible to give a final opinion on that aspect at this stage. For the time being, the plaintiff's case that the original plaintiff which was a registered partnership firm has now been transformed from a partnership firm into a proprietorship firm of Vinod Tanna during pendency of the suit, will have tobe accepted for which reason the request made in terms of clause-1 of the schedule will have to be accepted subject, however, to plaintiff succeeding in establishing the fact that he has got right to pursue and prosecute the present suit so as to ask for the reliefs claimed therein.

2. The next objection is in relation to clause-2 of the schedule. It is argued that the first defendant has died long back. Therefore, unless the plaintiffs were to move to set aside the abatement, the question of considering the

request to permit the plaintiffs to bring on record the heirs and legal representatives of deceased defendant no.1 cannot be entertained. In response, counsel for the plaintiffs submits that the plaintiff will not press for amendment in terms of clause-2 of the schedule in stead the plaintiff be given an opportunity to take out appropriate application which can be considered on its own merits and in accordance with law. Accordingly, the amendment in terms of clause-2 of the schedule is not pressed with liberty to the plaintiffs to take out appropriate application which will be decided on its own merits.

3. The third objection is in relation to the proposed amendment in terms of clause-3 of the schedule. It is contended that the proposed defendant nos.7 to 9 have no concern with the suit property. The suit property has been purchased by the proposed defendant no.6 (respondent no.4). In other words, the proposed defendants 7 to 9 referred to in clause-3 of the schedule are neither necessary nor proper parties. In response, counsel for the plaintiffs submits that the plaintiffs will not press for amendment to bring on record the proposed

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defendants 7 to 9. In other words, the plaintiffs request for amendment in terms of clause-3 of the schedule is partly accepted to the extent of impleading the proposed defendant no.6 Vasudeo Builders Pvt.Ltd..

4. Insofar as other amendments referred to in paragraph no.4 are concerned, the respondent no.4 has no objection if the same were to be granted without prejudice to the rights and contentions of the respective parties on merits of the stand taken together.

5. Accordingly this Chamber Summons is partly allowed on the above terms. Amendment which have been permitted under this order in respect of clause nos.1, 3 and 4 be carried out within two weeks from today. No order as to costs.

(A.M.KHANWILKAR, J.)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3624 OF 2006
IN
SUIT NO.104 OF 1990

Vinod Developers ... Plaintiffs
versus
Bharatsingh Kubersingh Thakur
and others ... Defendants

Mr.Milind Vasudeo a/w Kalpesh Joshi i/by M/s.Malvi Ranchodddas for plaintiffs.
Mrs.U.K.Shah for respondent no.2.
Mr.P.G.Lad for defendant no.4.

CORAM : A.M.KHANWILKAR, J.

DATE : 08th August 2007

1. As counsel for the newly added defendants seeks time to file reply and to examine the legal position, hearing of this motion is deferred till 28th August 2007. Reply affidavit be filed on or before 16th August 2007. Rejoinder, if any, be filed on or before 22nd August 2007. Pleadings to be filed in the registry well in advance. Till the next date of hearing parties shall maintain status-quo as of today in particular regarding creating third party rights in respect of the suit flat.

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(A.M.KHANWILKAR, J.)